

## **EXHIBIT 1**

### **INTRODUCTION**

This case arose from a Franchise Tax Board (“FTB”) audit of Respondent Committee to Elect Jim Gardiner Sheriff for the reporting period January 1, 1998 through December 31, 1998. Respondent James M. Gardiner was an unsuccessful candidate for San Luis Obispo County Sheriff-Coroner in the 1998 Consolidated General Election. Respondent Committee to Elect Jim Gardiner Sheriff (the “Committee”) was the controlled committee of Respondent James M. Gardiner. Respondent Robert E. Wacker served as the treasurer of the Committee.

During the audit period, Respondents received contributions totaling \$129,974, and made expenditures totaling \$115,609. The FTB audit found that Respondents failed to disclose sub-vendor information for expenditures totaling \$92,385 made during the audit period.

For the purposes of this stipulation, Respondents’ violation of the Political Reform Act (the “Act”)<sup>1</sup> is stated as follows:

On campaign statements filed on and between January 1, 1998 and December 31, 1998, Respondents failed to report sub-vendor information for payments totaling \$92,385, in violation of Section 84303.

**RESPONDENTS:** James M. Gardiner, Committee to Elect Jim Gardiner Sheriff, and Robert E. Wacker

### **SUMMARY OF THE LAW**

Section 81002 provides that campaigns shall fully and truthfully disclose information regarding receipts and expenditures in election campaigns in order to fully inform the public and inhibit improper practices. The Act established a campaign reporting system to accomplish this purpose.

Section 82013, subdivision (a) defines a “committee” as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. Pursuant to Section 84200, subdivision (a), a committee, which has qualified as a committee under Section 82013, subdivision (a), shall file semi-annual campaign statements each year no later than July 31 for the six month period ending June 30, and no later than January 31 for the six month period ending December 31. Section 84211 prescribes that certain information must be disclosed on campaign statements filed by a committee, including information about the contributions received, and the expenditures made by the committee.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All references to “Section(s)” are to the aforementioned Government Code unless otherwise indicated. Commission regulations appear at Title 2, California Code of Regulations, section 18109, *et seq.* All references to “Regulation(s)” are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Section 84211, subdivision (j)(6) requires the disclosure of specific information for all expenditures of \$100 or more made during the period covered by the campaign statement, including the name and street address of the person to whom the expenditure was made, the amount of the expenditure, and a brief description of the consideration that was received for the expenditure.

Section 84303 provides that no expenditure shall be made, other than overhead and normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of, or for the benefit of any candidate or committee, unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. This information reported by the candidate or committee is commonly referred to as "sub-vendor information."

Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds, are complied with. A committee's treasurer may be held jointly and severally liable, along with the candidate and committee, for any reporting violations committed by the candidate and committee. (Section 83116.5 and 91006.)

### **SUMMARY OF THE FACTS**

The FTB conducted an audit of Respondent Committee to Elect Jim Gardiner Sheriff for the reporting period January 1, 1998 through December 31, 1998. Respondent James M. Gardiner, an unsuccessful candidate for San Luis Obispo County Sheriff-Coroner in the 1998 Consolidated General Election, controlled Respondent Committee. Respondent Robert E. Wacker served as the treasurer of the Committee. The Committee was formed on February 26, 1998.

During the audit period, Respondents received contributions totaling \$129,974, and made expenditures totaling \$115,609. The FTB audit concluded that Respondents had substantially complied with the disclosure and record-keeping provisions of the Act. The only material finding was Respondents' failure to disclose sub-vendor information for payments totaling \$92,385 made to Barnett Cox & Associates and San Luis Mailing Service. The sub-vendor payments were for radio and television media advertising, newspaper advertising, printing, and postage.

In an interview conducted by Accounting Specialist Bob Perna of the Enforcement Division, Respondent Wacker stated that at the time the campaign statements were being prepared, information about the sub-vendor payments was available. Respondent Wacker stated that neither he nor Respondent Gardiner were aware of the requirement that they report specific information regarding sub-vendors who received payments of \$100 or more. Respondent Wacker believed it was sufficient to report the payments, and code them for the type of expenditure that was made. Respondents did a thorough job of completing the rest of their campaign disclosure statements.

## **CONCLUSION**

The amount of sub-vendor information that was not timely reported is significant, and totals 80% of all expenditures made by Respondents during the audit period.

However, Respondents were apparently not aware of the requirement that they report information regarding sub-vendors to whom payments of \$100 or more were made. This was the only finding from the FTB audit of a significantly large campaign. Respondents did a thorough and accurate job of making other campaign disclosures.

This matter consists of one count which carries a maximum possible administrative penalty of Two Thousand Dollars (\$2,000.00). The facts of the case, including the mitigating and aggravating factors discussed above, justify the imposition of the agreed upon penalty of Five Hundred dollars (\$500.00).